

AMENDED IN ASSEMBLY APRIL 20, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2029

Introduced by Assembly Members Dahle and Gordon

February 16, 2016

An act to amend Section 4584 of, and to repeal Section 4584.1 of, the Public Resources Code, relating to timber harvesting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2029, as amended, Dahle. Timber harvesting plans: exemptions. The Z'berg-Nejedly Forest Practices Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, including the cutting or removal of trees in compliance with existing law relating to defensible space. In this regard, the act authorizes, until 3 years after the effective date of regulations adopted by the board, the Forest Fire Prevention Pilot Project Exemption if specified conditions are met, including that only trees less than 24 inches in stump diameter, measured at 8 inches above ground-level *level*, shall be removed, no new road construction or reconstruction shall occur, and the activities shall be conducted in those portions of 21 counties designated as the Sierra Nevada Region, as defined, in any part of 7 other counties, or in any combination of these areas.

This bill would authorize the exemption until January 1, 2023, and would expand the exemption to instead permit the removal of trees less than 28 inches in stump diameter, measured at 8 inches above ground level, allow the construction or reconstruction of temporary roads of 600 feet or *less on slopes of 40 percent or less*, and apply to activities anywhere within those 28 counties, or in any combination of these areas, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) On October 20, 2015, the Governor issued a proclamation
4 declaring a state of emergency relative to the tree mortality
5 epidemic in California, characterized by all of the following
6 conditions:

7 (1) The lack of precipitation over the last four years has made
8 many regions of the state susceptible to epidemic infestations of
9 native bark beetles that cause vast tree mortality, with the United
10 States Forest Service estimating that over 22 million trees are dead
11 and tens of millions more are likely to die by the end of 2016.

12 (2) Recent scientific measurements suggest that the scale of this
13 tree die-off is unprecedented in modern history, and the die-off is
14 of such a scale that it worsens wildfire risk across large regions of
15 the state, presents safety risks for forested communities, and
16 worsens the threat of erosion across watersheds.

17 (3) Wildfires release thousands of tons of greenhouse gas
18 emissions and other harmful pollutants into the atmosphere.

19 (b) The thinning of forests is widely known to provide all of
20 the following benefits:

21 (1) Reduced threat of wildfires by removing fuel from the forests
22 as well as a reduced risk of canopy fire.

23 (2) Increased water storage by reducing the need for water in
24 forests.

25 (3) Conditions that favor healthier, better maintained forests.

26 SEC. 2. Section 4584 of the Public Resources Code is amended
27 to read:

1 4584. Upon determining that this exemption is consistent with
2 the purposes of this chapter, the board may exempt from this
3 chapter, or portions of this chapter, a person engaged in forest
4 management whose activities are limited to any of the following:

5 (a) The cutting or removal of trees for the purpose of
6 constructing or maintaining a right-of-way for utility lines.

7 (b) The planting, growing, nurturing, shaping, shearing, removal,
8 or harvest of immature trees for Christmas trees or other ornamental
9 purposes or minor forest products, including fuelwood.

10 (c) The cutting or removal of dead, dying, or diseased trees of
11 any size.

12 (d) Site preparation.

13 (e) Maintenance of drainage facilities and soil stabilization
14 treatments.

15 (f) Timber operations on land managed by the Department of
16 Parks and Recreation.

17 (g) (1) The one-time conversion of less than three acres to a
18 nontimber use. A person, whether acting as an individual, as a
19 member of a partnership, or as an officer or employee of a
20 corporation or other legal entity, shall not obtain more than one
21 exemption pursuant to this subdivision in a five-year period. If a
22 partnership has as a member, or if a corporation or other legal
23 entity has as an officer or employee, a person who has received
24 this exemption within the past five years, whether as an individual,
25 as a member of a partnership, or as an officer or employee of a
26 corporation or other legal entity, then that partnership, corporation,
27 or other legal entity is not eligible for this exemption. "Person,"
28 for purposes of this subdivision, means an individual, partnership,
29 corporation, or other legal entity.

30 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
31 regulations that do all of the following:

32 (i) Identify the required documentation of a bona fide intent to
33 complete the conversion that an applicant will need to submit in
34 order to be eligible for the exemption in paragraph (1).

35 (ii) Authorize the department to inspect the sites approved in
36 conversion applications that have been approved on or after January
37 1, 2002, in order to determine that the conversion was completed
38 within the two-year period described in subparagraph (B) of
39 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
40 the California Code of Regulations.

(iii) Require the exemption pursuant to this subdivision to expire if there is a change in timberland ownership. The person who originally submitted an application for an exemption pursuant to this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that a violation of the conversion exemption, including a conversion applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

(h) Easements granted by a right-of-way construction agreement administered by the federal government if timber sales and operations within or affecting these areas are reviewed and conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Standards Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an “approved and legally permitted structure” includes only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.

(2) (A) The cutting or removal of trees pursuant to this subdivision is limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in

1 accordance with any regulations adopted by the board pursuant to
2 this section.

3 (B) Trees shall not be cut or removed pursuant to this
4 subdivision by the clearcutting regeneration method, by the seed
5 tree removal step of the seed tree regeneration method, or by the
6 shelterwood removal step of the shelterwood regeneration method.

7 (3) (A) Surface fuels, including logging slash and debris, low
8 brush, and deadwood, that could promote the spread of wildfire
9 shall be chipped, burned, or otherwise removed from all areas of
10 timber operations within 45 days from the date of commencement
11 of timber operations pursuant to this subdivision.

12 (B) (i) All surface fuels that are not chipped, burned, or
13 otherwise removed from all areas of timber operations within 45
14 days from the date of commencement of timber operations may
15 be determined to be a nuisance and subject to abatement by the
16 department or the city or county having jurisdiction.

17 (ii) The costs incurred by the department, city, or county, as the
18 case may be, to abate the nuisance upon a parcel of land subject
19 to the timber operations, including, but not limited to, investigation,
20 boundary determination, measurement, and other related costs,
21 may be recovered by special assessment and lien against the parcel
22 of land by the department, city, or county. The assessment may
23 be collected at the same time and in the same manner as ordinary
24 ad valorem taxes, and shall be subject to the same penalties and
25 the same procedure and sale in case of delinquency as is provided
26 for ad valorem taxes.

27 (4) All timber operations conducted pursuant to this subdivision
28 shall conform to applicable city or county general plans, city or
29 county implementing ordinances, and city or county zoning
30 ordinances. This paragraph does not authorize the cutting, removal,
31 or sale of timber or other solid wood forest products within an area
32 where timber harvesting is prohibited or otherwise restricted
33 pursuant to the rules or regulations adopted by the board.

34 (5) (A) The board shall adopt regulations, initially as emergency
35 regulations in accordance with subparagraph (B), that the board
36 considers necessary to implement and to obtain compliance with
37 this subdivision.

38 (B) The emergency regulations adopted pursuant to
39 subparagraph (A) shall be adopted in accordance with the
40 Administrative Procedure Act (Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(6) (A) Notwithstanding paragraph (1), the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person's property in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with this subdivision and all of the following conditions are met:

(i) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(ii) For the areas between 150 and 300 feet from the habitable structure, the operations meet all of the following provisions:

(I) The residual stocking standards are consistent with Sections 913.2, 933.2, and 953.2 of Title 14 of the California Code of Regulations, as appropriate.

(II) Activities within this area will increase the quadratic mean diameter of the stand.

(III) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed ~~though~~ *through* the harvested area.

(IV) Postharvest slash treatment and stand conditions will lead to more moderate fire behavior in the professional judgment of the registered professional forester who submits the notice of exemption.

(V) Any additional guidance for slash treatment and postharvest stand conditions and any other issues deemed necessary that are consistent with this section, as established by the board.

(B) For purposes of this paragraph, "habitable structure" means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multidwelling structures, mobile and manufactured homes, and condominiums. For purposes of this paragraph "habitable structure" does not include commercial,

1 industrial, or incidental buildings such as detached garages, barns,
2 outdoor sanitation facilities, and sheds.

3 (C) The department shall evaluate the effects of this paragraph
4 and shall report its recommendations, before the paragraph becomes
5 inoperative, to the Legislature based on that evaluation. The report
6 shall be submitted in compliance with Section 9795 of the
7 Government Code.

8 (D) The board shall adopt regulations to implement this
9 paragraph no later than January 1, 2016.

10 (E) This paragraph shall become inoperative three years after
11 the effective date of regulations adopted by the board pursuant to
12 subparagraph (D) but no later than January 1, 2019.

13 (j) (1) The harvesting of trees, limited to those trees that
14 eliminate the vertical continuity of vegetative fuels and the
15 horizontal continuity of tree crowns, for the purpose of reducing
16 the rate of fire spread, duration and intensity, fuel ignitability, or
17 ignition of tree crowns.

18 (2) The board may authorize an exemption pursuant to paragraph
19 (1) only if the tree harvesting will decrease fuel continuity and
20 increase the quadratic mean diameter of the stand, and the tree
21 harvesting area will not exceed 300 acres.

22 (3) Except as provided in paragraph (11), the notice of
23 exemption, which shall be known as the Forest Fire Prevention
24 Exemption, may be authorized only if all of the conditions specified
25 in paragraphs (4) to (10), inclusive, are met.

26 (4) A registered professional forester shall prepare the notice
27 of exemption and submit it to the director, and include a map of
28 the area of timber operations that complies with the requirements
29 of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision
30 (x) of Section 1034 of Title 14 of the California Code of
31 Regulations.

32 (5) (A) The registered professional forester who submits the
33 notice of exemption shall include a description of the preharvest
34 stand structure and a statement of the postharvest stand stocking
35 levels.

36 (B) The level of residual stocking shall be consistent with
37 maximum sustained production of high-quality timber products.
38 The residual stand shall consist primarily of healthy and vigorous
39 dominant and codominant trees from the preharvest stand. Stocking

1 shall not be reduced below the standards required by any of the
2 following provisions that apply to the exemption at issue:

3 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
4 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
5 Code of Regulations.

6 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
7 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
8 Code of Regulations.

9 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
10 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
11 Code of Regulations.

12 (C) If the preharvest dominant and codominant crown canopy
13 is occupied by trees less than 14 inches in diameter at breast height,
14 a minimum of 100 trees over four inches in diameter at breast
15 height shall be retained per acre for Site I, II, and III lands, and a
16 minimum of 75 trees over four inches in diameter at breast height
17 shall be retained per acre for Site IV and V lands.

18 (6) (A) The registered professional forester who submits the
19 notice shall include selection criteria for the trees to be harvested
20 or the trees to be retained. In the development of fuel reduction
21 prescriptions, the registered professional forester should consider
22 retaining habitat elements, where feasible, including, but not
23 limited to, ground level cover necessary for the long-term
24 management of local wildlife populations.

25 (B) All trees that are harvested or all trees that are retained shall
26 be marked or sample marked by or under the supervision of a
27 registered professional forester before felling operations begin.
28 The board shall adopt regulations for sample marking for this
29 section in Title 14 of the California Code of Regulations. Sample
30 marking shall be limited to homogenous forest stand conditions
31 typical of plantations.

32 (7) (A) The registered professional forester submitting the
33 notice, upon submission of the notice, shall provide a confidential
34 archaeology letter that includes all the information required by
35 any of the following provisions that apply to the exemption at
36 issue:

37 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
38 of Section 929.1 of Title 14 of the California Code of Regulations,
39 and include site records if required pursuant to subdivision (g) of

1 that section or pursuant to Section 929.5 of Title 14 of the
2 California Code of Regulations.

3 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
4 of Section 949.1 of Title 14 of the California Code of Regulations,
5 and include site records if required pursuant to subdivision (g) of
6 that section or pursuant to Section 949.5 of Title 14 of the
7 California Code of Regulations.

8 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
9 of Section 969.1 of Title 14 of the California Code of Regulations,
10 and include site records if required pursuant to subdivision (g) of
11 that section or pursuant to Section 969.5 of Title 14 of the
12 California Code of Regulations.

13 (B) The director shall submit a complete copy of the confidential
14 archaeological letter and two copies of all required archaeological
15 or historical site records to the appropriate Information Center of
16 the California Historical Resource Information System within 30
17 days from the date of notice submittal to the director. Before
18 submitting the notice to the director, the registered professional
19 forester shall send a copy of the notice to Native Americans, as
20 defined in Section 895.1 of Title 14 of the California Code of
21 Regulations.

22 (8) Only trees less than 18 inches in stump diameter, measured
23 at eight inches above ground level, may be removed. However,
24 within 500 feet of a legally permitted structure, or in an area
25 prioritized as a shaded fuel break in a community wildfire
26 protection plan approved by a public fire agency, if the goal of
27 fuel reduction cannot be achieved by removing trees less than 18
28 inches in stump diameter, trees less than 24 inches in stump
29 diameter may be removed if that removal complies with this section
30 and is necessary to achieve the goal of fuel reduction. A fuel
31 reduction effort shall not violate the canopy closure regulations
32 adopted by the board on June 10, 2004, and as those regulations
33 may be amended.

34 (9) (A) This subparagraph applies to areas within 500 feet of
35 a legally permitted structure and in areas prioritized as a shaded
36 fuel break in a community wildfire protection plan approved by a
37 public fire agency. The board shall adopt regulations for the
38 treatment of surface and ladder fuels in the harvest area, including
39 logging slash and debris, low brush, small trees, and deadwood,
40 that could promote the spread of wildfire. The regulations adopted

1 by the board shall be consistent with the standards in the board's
2 "General Guidelines for Creating Defensible Space" described in
3 Section 1299.03 of Title 14 of the California Code of Regulations.
4 Postharvest standards shall include vertical spacing between fuels,
5 horizontal spacing between fuels, maximum depth of dead ground
6 surface fuels, and treatment of standing dead fuels, as follows:

7 (i) Ladder and surface fuels shall be spaced to achieve a vertical
8 clearance distance of eight feet or three times the height of the
9 postharvest fuels, whichever is the greater distance, measured from
10 the base of the live crown of the postharvest dominant and
11 codominant trees to the top of the surface fuels.

12 (ii) Horizontal spacing shall achieve a minimum separation of
13 two to six times the height of the postharvest fuels, increasing
14 spacing with increasing slope, measured from the outside branch
15 edges of the fuels.

16 (iii) Dead surface fuel depth shall be less than nine inches.

17 (iv) Standing dead or dying trees and brush generally shall be
18 removed. That material, along with live vegetation associated with
19 the dead vegetation, may be retained for wildlife habitat when
20 isolated from other vegetation.

21 (B) This subparagraph applies to all areas not described in
22 subparagraph (A).

23 (i) The postharvest stand shall not contain more than 200 trees
24 over three inches in diameter per acre.

25 (ii) Vertical spacing shall be achieved by treating dead fuels to
26 a minimum clearance distance of eight feet measured from the
27 base of the live crown of the postharvest dominant and codominant
28 trees to the top of the dead surface fuels.

29 (iii) All logging slash created by the timber operations shall be
30 treated to achieve a maximum postharvest depth of nine inches
31 above the ground.

32 (C) The standards required by subparagraphs (A) and (B) shall
33 be achieved on approximately 80 percent of the treated area. The
34 treatment shall include chipping, removing, or other methods
35 necessary to achieve the standards. Ladder and surface fuel
36 treatments, for any portion of the exemption area where timber
37 operations have occurred, shall be done within 120 days from the
38 start of timber operations on that portion of the exemption area or
39 by April 1 of the year following surface fuel creation on that
40 portion of the exemption area if the surface fuels are burned.

(10) Timber operations shall comply with the requirements of paragraphs (1) to (10), inclusive, of subdivision (b) of Section 1038 of Title 14 of the California Code of Regulations. Timber operations in the Lake Tahoe region shall comply instead with the requirements of paragraphs (1) to (16), inclusive, of subdivision (f) of Section 1038 of Title 14 of the California Code of Regulations.

(11) A notice of exemption, which shall be known as the Forest Fire Prevention Pilot Project Exemption, may be authorized if all of the following conditions are met:

(A) The conditions specified in paragraphs (2), (4), (6), (7), and (10) are met, except that, notwithstanding paragraph (5) of subdivision (b) of Section 1038 of Title 14 of the California Code of Regulations, the construction or reconstruction of temporary roads of 600 feet or less *on slopes of 40 percent or less* shall be allowed.

(B) Only trees less than ~~28~~ 26 inches in stump diameter, measured at eight inches above ground level, may be removed. A fuel reduction effort shall not violate the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(C) (i) The registered professional forester who submits the notice of exemption shall include a description of the preharvest stand structure and a statement of the postharvest stand stocking levels.

(ii) The level of residual stocking shall be consistent with maximum sustained production of high-quality timber products. The residual stand shall consist primarily of healthy and vigorous dominant and codominant trees from the preharvest stand. Where present prior to operations, the overstory canopy closure for trees greater than 12 inches in diameter at breast height shall not be reduced below 50 percent. Stocking shall be met with the largest trees available prior to harvest and shall not be reduced below the standards required by any of the following provisions that apply to the exemption at issue:

(I) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 913.3 of Title 14 of the California Code of Regulations.

1 (II) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
2 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
3 Code of Regulations.

4 (III) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
5 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
6 Code of Regulations.

7 (iii) If the preharvest dominant and codominant crown canopy
8 is occupied by trees less than 14 inches in diameter at breast height,
9 a minimum of 100 trees over four inches in diameter at breast
10 height shall be retained per acre for Site I, II, and III lands, and a
11 minimum of 75 trees over four inches in diameter at breast height
12 shall be retained per acre for Site IV and V lands. The retained
13 trees shall be the largest trees available prior to harvest.

14 (D) The activities conducted pursuant to this paragraph occur
15 in Alpine, Amador, Butte, Calaveras, Del Norte, El Dorado, Fresno,
16 Humboldt, Inyo, Kern, Lassen, Madera, Mariposa, Mendocino,
17 Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou,
18 Sonoma, Tehama, Trinity, Tulare, Tuolumne, or Yuba Counties,
19 or in any combination of these areas.

20 (E) All activities conducted pursuant to this paragraph occur
21 within the most recent version of the department's Fire Hazard
22 Severity Zone Map in the moderate, high, and very high fire threat
23 zones.

24 (F) The department shall maintain records regarding the use of
25 the exemption granted in this paragraph in order to evaluate the
26 impact of the exemption on fuel reduction and natural resources
27 in areas where the exemption has been used.

28 (G) This paragraph shall become inoperative on January 1, 2023.

29 (12) After the timber operations are complete, the department
30 shall conduct an onsite inspection to determine compliance with
31 this subdivision and whether appropriate enforcement action should
32 be initiated.

33 SEC. 3. Section 4584.1 of the Public Resources Code is
34 repealed.